



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0687]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the Stillwater Highway Bridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. This action is necessary because the Stillwater Highway Bridge is no longer open to vehicular traffic. This operating schedule change will increase daily openings for vessel traffic on the St. Croix River, while minimally impacting the pedestrian and bicycle traffic that transits the bridge.

DATES: This rule is effective May 15, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-0687 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, e-mail Eric.Washburn@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Stillwater Highway Bridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota, currently operates under 33 CFR 117.667(b). The Stillwater Highway Bridge provides a vertical clearance of 10.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial sightseeing/dinner cruise boats and recreational watercraft. On July 7, 2017, the Coast Guard was informed that with the August 2017 opening of the new St. Croix River Crossing, vehicular traffic over the Stillwater Highway Bridge terminated. In response, on August 30, 2017, we published a temporary deviation titled Notice of temporary deviation from drawbridge regulations; request for comments (82 FR 41174). There, we stated why we issued the temporary deviation, and invited comments on whether a permanent change to the Stillwater Highway Bridge operating schedule was warranted. In addition, the petition we received for schedule change was made available for public inspection in the Federal eRulemaking Portal online docket at <http://www.regulations.gov>. During the comment period that ended on November 28, 2017, we received 41 comments.

The Coast Guard is issuing this rule without prior notice and opportunity to

comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is unnecessary. The temporary deviation provided for public notice and comment, and this final rule lifts, rather than imposes, restrictions on the operating schedule of the Stillwater Highway Bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to change the schedule of the bridge before the summer boating season begins.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Stillwater Highway Bridge currently operates under 33 CFR 117.667(b). It has been closed to vehicular traffic and is now open for pedestrian and bicycle use only. As the current operating schedule was created solely to reduce the impact of drawspan openings on vehicular traffic, it now no longer serves the purpose or needs of the bridge.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 41 comments on our temporary deviation published on August 30, 2017. Of the 41 comments we received, 37 were in favor of the new

schedule, and 4 were not. Most of the 37 commenters in favor of the half hour schedule identified as boaters and stated that the half hour lift schedule represented a good compromise between boaters and pedestrians. Of the 4 commenters not in favor of the schedule, two stated that no change was necessary, one requested no change until a study regarding the schedule impact on bicyclists could be conducted, and one commenter, the Minnesota Department of Transportation, the owner of the bridge, requested that the schedule be adjusted to keep the number of lifts consistent with previous years.

The Coast Guard finds that there is a need to change the current schedule as it no longer serves the needs or purpose of the bridge. The Coast Guard also finds that a study regarding the impact of the new schedule specifically on bicyclists is not necessary to delay the schedule change for the upcoming boating season. Finally, while the Coast Guard understands the Minnesota Department of Transportation's concerns for keeping a consistent number of openings with previous years, the Minnesota Department of Transportation did not propose an alternate schedule, and as described above, the needs and purpose of the bridge have changed from previous years.

Approximately 5 of the 37 commenters in favor of the rule also proposed that the bridge either remain open and close on request of pedestrians, open on demand, or open every 15 minutes. The Coast Guard disagrees with these proposals. However, 2 of these 37 commenters proposed that, at least while the bridge is closed to pedestrian and bicycle traffic during construction, the bridge should remain open. The Coast Guard disagrees as the Minnesota Department of Transportation may have particular needs, such as for maintenance and repair, to keep the bridge in the closed position even while it is not open to pedestrian traffic.

Further, 2 of the 37 commenters in favor of the new schedule also proposed that the bridge's off-season 24 hour notice requirement be reduced to 2 hour notice, and another 3 of these 37 commenters also requested a no-wake zone in the vicinity of the bridge. These proposals were not part of the temporary deviation and are outside the scope of this rulemaking.

Finally, the Minnesota Department of Transportation requested that the Coast Guard work with the Minnesota and Wisconsin State Historic Preservation Offices to ensure that the schedule has no adverse effect under Section 106 of the Historic Preservation Act and also that the Coast Guard hold public meeting before making a permanent change to the schedule. Neither the Minnesota nor the Wisconsin State Historic Preservation Office themselves submitted a comment on the temporary deviation, and the schedule change is merely operational and has no effect on the aesthetics of the Stillwater Highway Bridge. Moreover, absent a specific need to hold a public meeting, the Coast Guard finds that there has been sufficient public comment on this schedule in the public docket of the temporary deviation. Accordingly, the Coast Guard finds that it is appropriate to adopt the schedule change that was implemented during the temporary deviation.

There are no changes in the regulatory text of this rule from the temporary deviation. This rule requires the bridge to open daily, every 30 minutes from 8 a.m. until midnight, and upon two hours notice from midnight until 8 a.m.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the findings from the test deviation that the final rule will reduce negative impact to navigation while minimally impacting bicycle and pedestrian traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons

stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for a drawbridge. It is

categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise 117.667(b) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the Stillwater Lift Bridge, Mile 23.4, shall open on signal as follows:

- (1) From May 15 through October 15, daily:

- (i) 8 a.m. to midnight, every half hour;
- (ii) Midnight to 8 a.m., upon two hours notice.
- (2) From October 16 through May 14, if at least 24 hours notice is given.

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Dated: May 8, 2018

Paul F. Thomas,
Rear Admiral, U.S. Coast Guard,
Commander, Eighth Coast Guard District.
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